IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2850 of 2001
to
FIRST APPEAL No 2874 of 2001
with
CIVIL APPLICATION No.6923 of 2001
to
CIVIL APPLICATION No.6935 of 2001
and
CIVIL APPLICATION No.6937 OF 2001
to
CIVIL APPLICATION No.6948 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

NATHAJI DAJIJI DECD. THRO' HEIRS HIRAJI NATHAJI KHANT

Appearance:

MR MUKESH PATEL, Ld. AGP for Appellant

MR GM AMIN for Respondent No. 1-3

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 09/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. This is a group of 25 Appeals under Section 54 of the Land Acquisition Act, 1894 (for short "the Act"). The appellant in all these appeals is the State of Gujarat and common questions are involved, arising out of common judgment. Upon the joint request, the entire group is taken up simultaneously for determination and adjudication and the entire group is being disposed of by this common judgment.

2. The acquisition proceedings, for the agricultural lands, situated in the sim of village Pujarani Muvadi, Taluka Malpur, District Sabarkantha for the purpose of Vatrak Jalgar Yojana, were initiated by issuing Notification under Section 4(1) of the Act on 26th June,1973.

3. The Special Land Acquisition Officer, after following requisite procedure under the Act, recorded an award in Award Case No.52 of 1973 under Section 11 of the Act, on 31st December, 1974, whereby the market price of the land acquired, came to be fixed at the rate of Rs.3300/-- per acre for irrigated land and Rs.2200/- per acre for non-irrigated land.

4. Being aggrieved by the said amount offered and the award made by the Special Land Acquisition Officer, as stated hereinabove, the respondents, who are the original claimants-owners of the land, made applications under Section 18 for reference to the District Court through the Collector against the award in Award Case No.52 of 1973. The Land Reference Case Nos.3876 to 3914 of 1989 were consolidated and evidence was recorded in the Main Land Reference No.3879 of 1989. The learned

Assistant Judge, Sabarkantha District, at Himmatnagar by his award dated 9th February, 1999, allowed the references partially. The appellant has challenged the common award of the Reference Court in the said group of references, by filing this group of 25 appeals. The Reference Court considered the facts and circumstances, documentary evidence as well as oral evidence, and awarded the additional amount of compensation at the rate of Rs.145/-- per Are for nonirrigated land and Rs.177.50 paisa per Are for irrigated land. In other words, the claimants came to be granted an amount of Rs.2 per sq.mtr. by way of market price in all, over-and-above, the statutory benefits under the Act.

5. During the course of submissions made before us, the entire documentary evidence as well as oral evidence were supplied and we were taken through them for the purpose of consideration of the merits and challenge against the awards in this group. After having considered the evidence on record, and the rival submissions advanced before us, and the relevant proposition of law, we are of the clear opinion that the fixing of the market price at the rate of Rs.2/- per sq.mtr. in respect of the land under references could not be said to be unjust, unreasonable or excessive. The Reference Court has taken into consideration the various facts and circumstances relevant for the consideration of fixation of market price under Section 23 of the Act.

6. The observations made by the Reference Court, in relation to the appreciation of the evidence in paras (11) and (12), have been highlighted by both the sides and, therefore, it would not be necessary to repeat and reiterate the same since we agree with these observations. The respondents - original claimants have placed reliance on the evidence of one witness Gema Natha examined at Ex.102. He had purchased the agricultural land bearing Revenue Survey No.68 of Village Fansarel admeasuring 2 Acre and 20 Gunthas for consideration of Rs.62,500/-. The sale-deed evidencing the transaction is produced by him at Ex.103. The documentary evidence produced at Exh.103 by the claimants in the evidence of Gema Natha clearly goes to show that the rate of agricultural land of village Fansarel comes to Rs.625/-- per Are. The distance between the village Pujarani Muvadi and Fansarel is about 4 K.M. It is also very clearly testified by him that the quality and fertility of the agricultural lands of both the villages are almost similar.

7. No doubt it will be interesting to mention that

the date of Notification in the present case under Section 4(1) of the Act is important, which is 26/6/1973 whereas the date of sale in relation to the sale-deed at Ex.103 is 29/11/1994. Thus there is a gap of 21 (twenty one) years between the acquisition of the land and the transaction of sale evidenced by Exh.103. It is in this context that the Reference Court has not seriously considered it for the purpose of fixing the market price under the land acquisition. The answer given by the Reference Court is quite justified and we are in full agreement. Therefore, the submission made by learned AGP is required to be rejected.

8. It is also very clear from the evidence of the claimant witness Pujabhai, examined at Exh.99 that the acquired agricultural lands were yielding good crops. It is borne out from the evidential testimony at Exh.99 that the Ground-nut crop is of 35 Maunds per Vigha and Tuver is about 35 Maunds per Vigha and Adad is about 40 Maunds per Vigha. It is also very clearly testified by him that they were growing agricultural crops of groundnut, 55 Maunds of wheat per Vigha and 50 Maunds of cotton per Vigha. No doubt, the witness has made slight exaggeration which has excluded the consideration by the Reference Court. It is clearly mentioned in the impugned judgment that the Reference Court has taken very reasonable approach in fixing the market price by employing the capitalization method of the agricultural land acquired by the appellant. It is also manifested that the same is in consonance with the principle laid down by this Court in State of Guajrat v/s. Patel Narvatlal Khodidas, reported in 1995 (1) GLH (UJ) 17. It must be remembered that for the determination of the market price contemplated under Section 23 of the Act, the various methods are available and agricultural yield of the lands under reference is one of the methods which is required to be capitalized in terms of celebrated principle of law which is processed by the Reference Court. Apart from that, the other material aspects also are kept in mind and finally the Reference Court has fixed the market price at Rs.2/-- per sq.mtr. and other statutory benefits. No doubt, in respect of the statutory benefits, there is a dispute about the percentage and the provisions in this regard would be dealt with by us hereinafter.

9. Our attention was invited to the unsuccessful attempt made by the appellant - the State of Gujarat, by filing the group of First Appeal Nos.7746 to 7814 of 1999 against the award of the same Reference Court in Land Acquisition Case Nos.3741 to 3817 of 1989. In that group

also, the acquisition was for public purpose and in the present group, the public purpose is common, like that of Vatrak Jalgar Yojana. In that group of matters, the lands acquired were forming part of the same Taluka and same District in which the acquisition was pursuant to the Notification under Section 4(1) dated 16th January, 1975 whereas in this group of matters, the acquisition of the land is in pursuance of the Notification under Section 4(1) of the Act dated 26th June, 1973 and in that group of the matters, the Reference Court had held that the claimants-owners of the lands were entitled to the compensation at the rate of Rs.4/-- per sq.mtr. in relation to the agricultural lands acquired, against which the State of Gujarat preferred a group of First Appeals, as aforesaid, which came to be summarily dismissed by this Court on 27th September, 2000. The copy of the same was placed before us for our consideration, which we have taken on record. The difference between the date of Notification in both the groups is less than 20 months. However, the fixation of market price in the present group is Rs.2/-- per sq.mtr. whereas in that group, market price is Rs.4/= per sq.mtr. and the appeals against that order came to be dismissed and it has become final. Therefore, there is no reason for us to reduce the amount of Rs.2/-- per sq.mtr. in relation to the land acquired under the present group. Over and above, in view of the reasons assigned by the Reference Court and the confirmation of the same by this Court in other group, which is referred to above, there is no reason for us to reduce the amount.

10. It would be also interesting to mention that the State of Gujarat filed the aforesaid group which came to be summarily dismissed on 27/9/2000 which was subsequent to the successful appeals at the instance of the owners of the lands in First Appeals Nos.3920 to 3988 of 1999. The entire group came to be disposed of by a Division Bench of this Court on 15/09/1999. The appeals of the claimants were partly allowed and this Court has held that the market value of the agricultural land of village Kidiad on the relevant date, i.e. publication of the Notification under Section 4(1), is Rs.4/-- per sq.mtr. The claimants in that group were also found to be entitled to statutory benefits. The copy of the judgment of that group is also placed on record.

11. In view of the aforesaid facts and circumstances, the contention that fixing of the market price by way of compensation under Section 23 of the Act by the Reference Court is erroneous, unreasonable, and unsupportable is itself unsustainable and therefore, it is rejected. The

second contention advanced is with regard to the statutory benefits granted by the Reference Court. That the claimants are ordered to be paid solatium and the appellant is directed to pay interest at the rate of 9% for the first year from the date of taking over the possession and, thereafter, at the rate of 15% per annum on the additional amount of compensation awarded, with proportionate costs. The contention in this behalf raised on behalf of the appellant by the learned AGP appears to be justified. So far as the rate of interest is concerned, for the first year from the date of taking over the possession, the claimants would be entitled to at the rate of 6% per annum instead of 9% per annum, and instead of the amount of interest at the rate of 15% per annum from the second year till the date of taking over the possession, as awarded by the Reference Court, the claimants would be entitled to interest at the rate of 9% per annum till the date of taking over the possession in view of the following three decisions of the Hon'ble Apex Court and the provisions of Sections 23(2), 28 and Section 30 of the Land Acquisition Act, as amended in 1984:

(1) Mir Fazeelath Hussain and others v/s. Special Deputy Collector, Land Acquisition Hyderabad, reported in AIR 1995 Supreme Court 1424.

(2) Priya Vart and Another v/s. Union of India, reported in (1995) 5 Supreme Court Cases 437.

(3) Umed Industries and Land Development Co. and Others v/s. State of Rajasthan and Others, reported in (1995) 2 Supreme Court Cases 563.

Insofar as the direction of payment of 30% solatium, on the market value of the land under the acquisition, as contained in the impugned common judgment, is concerned, the claimants would be entitled to the rate prevalent before the amendment made in the Act, 1984 and in view of the Constitutional Bench decision of the Hon'ble Supreme Court rendered in Union of India and another v/s. Raghubir Singh (dead) by LRs. etc., AIR 1989 (2) S.C. 1933 and which is followed in Kesavananda Bharati Sripadagalvaru and others, reported in AIR 1973 S.C. 1461 decided by the bench of 13 Hon'ble Judges, the claimants are entitled to statutory benefits and they are entitled to claim solatium at the rate of 30% and interest on the compensation from the date of taking over the possession for one year or from the date of Notification under Section 4(1) of the Act, whichever is earlier, and interest at the rate of 9% for the first

year and, thereafter, at the rate of 15% till the date of payment. Therefore, the contention that the claimants are not entitled to statutory benefits is meritless.

13. In the result, this group of First Appeals shall stand disposed of likewise. The group of Civil Applications for stay order shall also stand disposed of as they would not assume any survival value.

(J. N. Bhatt,J.)

(Akshay H. Menta, J.)

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